

# The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

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**No. 270] NEW DELHI, WEDNESDAY, OCTOBER 21, 1953**


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**ELECTION COMMISSION, INDIA**

NOTIFICATION

*New Delhi, the 8th October 1953*

**S.R.O. 1942.**—Whereas the election of Shri Ran Vijay Singh, as a member of the Legislative Assembly of the State of Madhya Bharat, from the Umri constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sobaran Singh, s/o Shri Hans Raj Singh, Village Bhind, Tehsil Bhind, District, Bhind, Madhya Bharat;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

**BEFORE THE ELECTION TRIBUNAL, GWALIOR, MADHYA BHARAT****ELECTION PETITION No. 265 of 1952**

Election petition under section 81 of the Representation of the People Act,  
No. XLIII of 1951

**PRESENT:**Shri V. K. Dongre, M.A., LL.B.,—*Chairman.*Shri Suraj Bhan, B.A., LL.B.,—*Member.*Shri Bhagwan Swaroop, Advocate,—*Member.*

Sobaransingh s/o Hansraj Singh of village Bhind, Tehsil Bhind, District  
Bhind.—*Petitioner.*

*Versus*

1. Ran Vijay Singh, s/o Dur Vijay Singh of village Lahar, District Bhind.

2. Chimman Singh, Gwalior City.

3. Raghubir Singh, village Pandri, District Bhind.—*Respondents.***COUNSELS FOR PETITIONER:**

Messrs. Shri Shiv Dayal Shrivastav, Shri Jagannathprasad Shrivastav,  
Shri Bateshwar Dayal, Shri Babu Suraj Narain and Shri Murlidharji  
Maheshwari.

**COUNSEL FOR RESPONDENT No. 1:**

Shri Puttupal Dube, Advocate, Gwalior.

## JUDGMENT

This is an election petition under section 81 of the Representation of the People Act, filed by Shri Soharansingh, who was a candidate for election, for the Umri Constituency of Madhya Bharat Legislative Assembly, to set aside the election of Shri Ran Vijay Singh, respondent No. 1, who was declared elected. The main grounds on which the petitioner has challenged the election, briefly stated are:—

(i) that one Parmanand, resident of Bilao had undertaken a contract with the Government of Madhya Bharat State for the purchase and supply of Muskarat (Opium, Ganja, Bhang) for the period commencing from 1st April 1951. The respondent No. 1 advanced him Rs. 4,500, and on 16th July 1951 by a registered agreement he became a sharer and interest holder of twelve annas in the above mentioned contract. This share and interest continued at the time of the acceptance of nomination paper. Thus respondent No. 1 was disqualified under section 7(d) of the R.P. Act; (ii) that the respondent being a Jagirdar was disqualified for being elected; (iii) that the election was not a free election as respondent No. 1 procured the help of dacoit Mansingh and his gang who terrorised the voters; (iv) that the respondent No. 1 obtained the help of persons serving under the Government; (v) that on 3rd January 1952 the Presiding Officer at the Polling Station Umri, changed the scheduled time of commencement of polling from 8-0 A.M. to 9-0 A.M. at the instance of the respondent No. 3. Many voters hearing the change of time, did not turn up at all; (vi) that the presiding officer at Sagra Polling Station in collusion with the agent of respondent No. 1 changed the place fixed for polling from the school building to the Chaupal of Himmat Bahadur Singh, without notice to the petitioner. As Himmat Bahadur Singh was not on good terms with poor people of the village, they did not like to go to his Chaupal; (vii) that the return of election expenses is not according to law and rules.

2. Ran Vijay Singh, respondent No. 1 is the only contesting respondent. Respondent Nos. 2 and 3 did not appear. Excepting para. Nos. 1, 2 and 2-A of the petition the respondent No. 1 has denied all the allegations made in the petition and has taken some legal and technical objections also.

3. The following issues were framed:—

- (1) Whether respondent No. 1 advanced a sum of Rs. 4,500 to Parmanand as a loan for taking contract with the Government of Madhya Bharat for the purchase and supply of Muskarat and did respondent No. 1 become a share holder of twelve annas as detailed in para. No. 3 of the petition. Whether as such, was he disqualified for being a member of the Madhya Bharat Legislative Assembly, *vide* section 7(d) of the R.P. Act.
- (2) Whether respondent No. 1 is Jagirdar of Lahar and as such does he hold an office of profit? What is its result?
- (3) Has the election not been a free election for grounds mentioned in para. No. 3 of the petition. What is its effect?
- (4) Did respondent No. 1 commit corrupt practices as detailed in para. No. 6 of the petition. What is its effect?
- (5) Did the Presiding Officer of Umri Polling Station change the scheduled time of the commencement of polling from 8 A.M. to 9 A.M. Has this materially affected the result of the election?
- (6) Did the Presiding Officer at Sagra Polling Station change the place of polling without any notice to the petitioner. If so, what is its effect on the election?
- (7) Whether respondent No. 1 has filed false and fabricated receipts in the return of election expenses. Is the election void on this ground?
- (8) Is there a case of non-joinder of necessary parties and if so what is its effect?
- (9) Is the petition not properly verified. What is its effect?
- (10) Has the petitioner not given full particulars of corrupt and illegal practices as required by section 83(2) of the R.P. Act 1951. What is its effect?
- (11) Is the prayer made in petition (para. No. 12) not legal and what is its effect?

- (12) Has this Tribunal no jurisdiction to enquire into the allegations contained in para. Nos. 3, 4, 5 and 6 of the petition?
- (13) Are the statements contained in para. No. 5 of the petition vexatious, frivolous and are they liable to be struck off?
- (14) To what relief is the petitioner entitled.

4. Issue Nos. 9, 10, 11 and 12 have been decided by our order dated 16th December, 1952 (Annexure A), and as a result of our finding on issue No. 10 issue No. 7 is cancelled. Regarding other issues the petitioner, including himself, has examined 37 witnesses and respondent No. 1, 44. There are 25 exhibits produced by the petitioner and 7 by respondent No. 1.

5. Issue No. 1.—The allegation regarding this issue, in short is, that one Parmanand had undertaken a contract with the Madhya Bharat Government for the purchase and supply of Muskarat and respondent No. 1 had advanced him Rs. 4,500 as loan, and later on he became a share holder in this contract, as such he was disqualified to stand for election, under section 7(d) of the R.P. Act. Respondent No. 1 has denied every thing and has specifically said that he was not a partner with Parmanand at the date of filing of the nomination paper or thereafter. According to the evidence led by respondent No. 1, his defence really appears to be that the agreement entered into between Parmanand and the Shiv Sahai, the Mukhtaram of the respondent No. 1, was cancelled on 16th August 1951. Thus there are three parts of this issue.

- (a) Whether Parmanand had taken a contract with the Madhya Bharat Government for the purchase and supply of Muskarat and whether respondent No. 1 became a twelve annas share holder in it.
- (b) Whether the so called agreement was cancelled by respondent No. 1 on 16th August, 1951, i.e., before the filing of the nomination paper.
- (c) Whether the so called agreement between Shiv Sahai, for Ran Vijay Singh, and Parmanand was a contract of the nature stated in section 7(d) of the R.P. Act.

6. There is not much dispute left now regarding part (a). Parmanand P.W. 35 has admitted having taken a contract of Muskarat for the year 1951-52. Respondent No. 1, Ran Vijay Singh (R.W. 44) has said in his statement that he had advanced Rs. 12,000 to Parmanand and Shiv Sahai (Mukhtaram of the respondent) entered into a partnership contract with Parmanand without his authority. Shiv Sahai R.W. 37 has also said the same thing. Bhagwat Swaroop P.W. 31 who is a District Excise Officer has said that a licence is given for the sale of Muskarat. Ex. A/2 is Parmanand's Kabulyat and the licence must be with him. From the evidence before us our conclusion is that Parmanand was really a licensee for the sale of Muskarat, who, in common parlance is called a Thekedar (Contractor) and Shiv Sahai entered into an agreement of partnership of Ran Vijay Singh and Parmanand, without the permission and authority of Ran Vijay Singh. Ex. A/3 (General Power of Attorney) does not authorise Shiv Sahai to enter into any contract on behalf of Shri Ran Vijay Singh.

7. In connection with part (b), respondent No. 1 has produced Ex. A/1 and has examined Vishwanath Singh (R.W. 6), Panchamsingh (R.W. 32), Shiv Sahai (R. W. 37), Vanmali Dwivedi (R.W. 43) and has himself given his statement on oath. Besides this Parmanand P.W. 35 has also been confronted with Ex. A/1 in his cross-examination. Parmanand has admitted that Ex. A/1 is signed by him, but in his re-examination he has said that the date 16th August 1951 on Ex. A/1 is not in his hand and then he further says that this was written by him after the election petition was filed. Taking into consideration this statement of Parmanand the only point for decision is about the date of this Ex. A/1. Vishwanath Singh, R.W. 6 and Panchamsingh R.W. 32, are the attesting witnesses of Ex. A/1. Vishwanath Singh has said that Parmanand wrote and signed Ex. A/1 in his presence and put the date of the day of writing that paper on it, Panchamsingh, R.W. 32 has said that he was present at the time of the execution of Ex. A/1. Parmanand wrote it and signed it but he was unable to say whether the date was written on it at the same time or later on. In cross-examination the witness has said that Ex. A/1 was written on 16th August 1951 in the morning. Shiv Sahai R.W. 37 and the respondent Ran Vijay Singh (R.W. 44) have said that Ex. A/1 was written on 16th August 1951 and Parmanand himself wrote this date on Ex. A/1. Shri Vanmali Dwivedi R.W. 43 is a handwriting expert. He has examined the disputed portion 'Tarikh 16th August 1951' written on Ex. A/1, and has said that this portion has been written by the same person, who has written

Ex. A/4, i.e., Parmanand. Shri Shiv Dayal, the learned counsel for the petitioner has drawn our attention to certain discrepancies in the evidence and has said that respondent No. 1 has not taken the plea of the cancellation of the contract by Ex. A/1, hence the petitioner has been put to a disadvantage. Shri Shiv Dayal has cited A.I.R. 1930 P.C. page 57 but we do not find it appropriate for the purpose. Though there are some discrepancies in the statements of witnesses, in our view, there is overwhelming evidence regarding the fact that Parmanand wrote Ex. A/1 on 16th August 1951 and cancelled the contract entered into by Shri Shiv Sahai, thus there was no partnership existing between Ran Vijay Singh and Parmanand on the date of filing the nomination paper which was 20th November 1951.

8. According to section 7(d) of the R.P. Act a person is disqualified for being chosen as a Member of Parliament or of a State Legislature, if whether by himself or by any other person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by the appropriate Government.

9. From the statement of Bhagwat Swaroop R.W. 31, it is quite clear that Parmanand had a licence for the sale of intoxicating drugs. His function being to take the articles from the Ware-house, after paying the Government duty, and to sell it to the public. From Ex. A/2 also the position of Parmanand appears to be that of a licensee. Mr. Shiv Dayal's contention is that the contract by Parmanand with the Government is for the performance of services undertaken by the Government, inasmuch as the Government has undertaken to supply intoxicating drugs to the people. He has cited a decision of the Election Tribunal, Vellore, in Election Petition No. 109 of 1952 reported in the *Gazette of India* dated 17th December 1952 on pages 961 to 972. This is a case in which the respondent was a State nominee for the distribution of bales of yarn in a particular area under a contract entered into with the Government. In the case before us Parmanand is a licensee for selling intoxicating drugs to the public. We are unable to agree with the contention of the learned counsel of the petitioner, that the Madhya Bharat Government has undertaken the so called service of supplying intoxicating drugs to the people or that the licensee is then to perform such services for the Government. In fact our view is that the sale of intoxicating drugs under a licence is done for controlling the use of such drugs. We are of view that Parmanand's transaction with the Government is not for the performance of any service undertaken by the Government. This view is supported by decisions in Election Petition No. 4 of 1952 and No. 8 of 1952 reported in the *Gazette of India*, dated 6th December, 1952 on page 2535 and dated 24th April, 1953 on page 1455 respectively. We are of opinion that it cannot be said that Parmanand had a contract for the supply of goods to, or for the execution of any works, or the performance of any service undertaken by the Government.

10. As the result of our finding-on all the three parts, we decide issue No. 1 against the petitioner.

11. *Issue No. 2.*—This issue has not been pressed by the petitioner hence it stands decided against him.

12. *Issue No. 3.*—The allegation in para. No. 5 of the petition is that respondent No. 1 procured the help of dacoit Mansingh and his gang, who terrorised the voters and especially the Harijan voters and threatened them with injury, and other communal elements refrained Harijan voters from going to polls by exercising undue influence. The particulars are given in list A. We shall now deal with the various corrupt practices mentioned in this list;

(1) It is said that Ajgarsingh and Patiram of Dhonchera village refrained about fifty voters from voting on 12th January 1952 and induced 100 voters to vote for respondent No. 1. In the list it is not mentioned how these two persons refrained or induced the two sets of voters. Kansrajsingh P.W. 8 is the only witness. He has said that Ajgarsingh and Pitamsingh were telling the Harijan voters not to vote for the Congress. This witness has worked for the Congress in the election. Respondent No. 1 has examined Ajgarsingh R.W. 4, Patiram R.W. 3 and Sukhanand R.W. 5 in this connection and they have denied what is alleged by the petitioner. In our view, there is no reliable evidence in support of the allegation made by the petitioner.

(2) It is said that on 12th January 1952 Budhsingh, Keshavsingh and Bhagwansingh threatened the electors with injury to life and property and thereby obtained 250 votes for respondent No. 1. Harbilas P.W. 9 and Sobaransingh Petitioner P.W. 37, are the witnesses in this connection. Harbilas is resident of Bind and had

been to Pulaoli a day before the polling, for Congress propaganda. He says Budhsingh, Keshavsingh, Bhagwansingh told him that canvassing for Congress was not possible in that village. In the morning he saw one or two men of Raja Sahib following the voters and they were not allowing Congressmen to say anything to those voters. Sobaransingh has only drawn our attention to certain complaints made by him. Taking as a whole, we are not impressed by the petitioner's evidence.

(3) It is alleged that on 14th January 1952 Gajadharsingh Patel administered illegally and forcibly oath to voters for the purpose of getting votes. Chandkhan P.W. 10 is the only witness on the point and we are not satisfied by his evidence.

(4) It is said that on 15th January 1952 in village Bara Khurd, Koksingh, Chatussingh, Dhansingh, interrupted 300 voters in the free exercise of their electoral right. Ramsingh P.W. 7, Hajurisingh, P.W. 11, Tulsiram P.W. 13, Ramkishan P.W. 14, Badri P.W. 15, Iqbal Bahadur P.W. 16, Bajrang Singh P.W. 27, have, in short, said that Koksingh, etc. were asking the Chamars not to vote. Budhsingh R.W. 19, Dhansingh R.W. 18 and Koksingh R.W. 2 have denied the allegations made against them. Considering the evidence as a whole, we are not satisfied with the petitioner's evidence.

(5) It is said that at Bharoli-Khurd, Summersingh obtained 100 voters by threatening. Lalsingh P.W. 36 is the only witness, and he has said that Summersingh was telling the people to vote for Ramrajya, we see nothing objectionable in this.

(6) It is said that on 15th January 1952 at Bharoli Khurd, Narayansingh was able to induce 200 voters to vote for respondent No. 1 on communal basis. Lalsingh P.W. 36 is the only witness regarding this fact and he has said that Narayansingh was telling the people that they should vote for Ramrajya or they would be excommunicated. We are not satisfied with the solitary statement of this witness and find the petitioner's evidence insufficient and unreliable.

(7) The allegation in the list of particulars is that on 13th January 1952 Govindsingh of Chutavli arranged the tour of dacoit Mansingh and his gang in the polling areas of Chutavli, Chajjupura, Bharoli-Kalan, Bharoli-Khurd, Nanuhata and Bilao. The gang threatened the voters in general with injury of every kind, if they did not vote for respondent No. 1.

There is absolutely no evidence regarding the fact that Govindsingh arranged the tour of Mansingh with the connivance of respondent No. 1 or his agent.

Hakimsingh P.W. 4 has said that Mansingh and 10 or 12 men met him in jungle and told him to vote for Ramrajya or not to vote for anybody. Later on, those people went in the village and told people that they should vote for Ramrajya or they would be beaten. The witness has worked for the petitioner in his election campaign. Shiv Shankar P.W. 1 has said that Mansingh told him to ask the villagers not to vote for Sobaransingh. He told the villagers what Mansingh had said. Pyarelal P.W. 5 has practically said the same thing. Raghunathsingh P.W. 6 has said that Mansingh met him in the jungle and told him that he should stop canvassing for the Congress otherwise he would be killed. Kamod P.W. 2 has said that Mansingh had come to their village and told him not to vote. The witness has admitted that he had gone to vote. Gangashankar P.W. 29, has said that on 13th January 1952, 4-5 persons came to him and told him how they could come for polling as some of their people were being beaten. He asked them to go to the Collector. Dinkarrao Najgad P.W. 17 Sub-Inspector of Police has said that on 14th January 1952, he got a report that Mansingh dacoit was in Norasahi area and he beat two Chamars. This report was made by a Chaukidar, but he has not come in evidence. Harikishan Bhuta P.W. 33 was the District Congress President of Bind at that time. He has said that he received complaints that Mansingh and his people were roaming in that area and they beat some Chamhars. We have very carefully considered the evidence produced by the petitioner in support of his allegation regarding dacoit Mansingh's interference in the election. Without further referring to the evidence in detail, we are at once inclined to say that we have not been impressed by any of these persons (who say that Mansingh met them) as truthful witnesses hence we don't think it necessary to deal with the evidence produced by the respondent No. 1 in this respect.

(8) The allegation is that Harijans of Norasahi were beaten by the gang of dacoits because they expressed their view to vote for the petitioner, hence 1500 voters did not go to polls. Though reference has been made by some witnesses about the beating of some Chamhars in Norasahi, there is no direct and reliable evidence that dacoits beat the Chamhars, as they wanted to vote for the Congress.

(9) The allegation is that at Sagra 50 voters who were to vote for the petitioner voted under compulsion for respondent No. 1. The allegation is vague and Shraavan-singh P.W. 20 and Prahladsingh P.W. 25 have only said that on account of change of place 90 or 100 voters did not go for voting. The allegation is not supported by the evidence.

(10) It is alleged that 100 voters of village Bazal were induced to vote for respondent No. 1. The allegation is vague and there is no evidence in support of it.

(11) The allegation is that Prabal Pratapsingh refrained 150 Harijan female voters at Bllao. Dhanram P.W. 28 and Harbilas P.W. 30 have said that about 150 women had collected for voting when Prabal Pratap threatened them, so they went away. These witnesses are not able to mention the name of a single voter nor can they say how many of the collected women were voters.

(12) It is said that in Kakara village 100 women voters were not allowed to vote by Gajadharsingh and his son Babusingh and Parasram Singh. The only witness produced is Kalyan Singh P.W. 26 who was polling agent on behalf of the Congress. He has said that Gajadharsingh, Babusingh, Parasram Singh asked the women voters not to vote. There is no independent witness.

The exhibits 11, 12, 13, 14, 15, 16 and 17 produced by the petitioner to show some of the corrupt practices committed by respondent No. 1 need special discussion. Ex. 11 and 15 relate to village Pulaoli, both these exhibits show many discrepancies, Ex. 11 mentions about some Thakurs only while in Ex. 15 the name of Budhsingh has been mentioned, in the list A item No. 2 the names of Koksingh and Bhagwansingh have been further added, further more there are discrepancies regarding their contents and details. Ex. 12 and 14 relate to village Kakara. In the Ex. 12 the name of Babusingh and Parasram Singh appear while no one has been named in Ex. 14, in the list A new name of Gajadharsingh has been added. Ex. 13 and 17 relate to village Bara-Khurd. In Ex. 13 it is mentioned that Chatur-singh and Dhansingh did not allow them to bring voters while Ex. 17 says that Koksingh and others did not allow the ladies of Chamhars to exercise their right of voting. Ex. 16 relates to village Chhajupura, Chutavil Bharoli, Nanuhata etc., it says that Mansingh and his party gave threatening to the Chamhars of Norasahi which caused terror in these villages while in list A item No. 7 it has been mentioned that Budhsingh arranged the tour of Mansingh and his party in that area. In view of gross discrepancies we are not prepared to rely upon the above said exhibits.

13. After considering the whole evidence produced by the petitioner, we are of opinion that it is insufficient. Ordinarily in support of each allegation made by the petitioner, his polling agent or worker or a member of the party to which the petitioner belongs, has been produced as witness. The allegations are that members of a certain community were threatened but the affected persons have not been produced to depose what is alleged to have happened to them. All the alleged happenings have taken place where the presence of other people was possible, so this lack of independent evidence, is not without significance, hence in our opinion, none of the corrupt practices mentioned in list A are proved, and it cannot be said that the election has not been a free election. Hence we decide issue No. 3 against the petitioner.

14. Issue No. 4.—The allegation in para. No. 6 of the petition is that respondent No. 1 obtained the help of persons serving under and holding offices of profit under the Madhya Bharat Government. Certain Patels were appointed Polling Agents. The particulars are given in list B. We now deal with the corrupt practices mentioned in this list.

15. The allegations Nos. (1), (2), (3) are that Gulabsingh, Malkhansingh and Budhsingh who were patels acted as polling agents for respondent No. 1. Wasudeo P.W. 21, Prahladsingh P.W. 25 and Bhawarsingh P.W. 22, have said that Gulabsingh, Malkhansingh and Budhsingh were polling agents for Ramrajya Parishad at Kanawar, Sarsal and Kota respectively. Gulabsingh R.W. 40 has said that he did not work as polling agent for respondent No. 1 and Malkhansingh R.W. 41 has said that he was polling agent of respondent No. 1, but he became Patel from 14th August 1952 i.e., after the election. In our view there is no sufficient evidence regarding the fact that Gulabsingh, Malkhansingh and Budhsingh were Patels at the time of the election and Gulabsingh and Budhsingh were polling agents of respondent No. 1.

16. The allegation No. (4) is that Vishwanath Singh, who was clerk in Tehsil Bhind arranged a meeting on 14th January 1952 for respondent No. 1, and issued slips to voters. Shravansingh P.W. 20 has said that in Sagra, Vishwanath Singh who was clerk in Tehsil Bhind lectured and issued slips for Ramrajya Parishad.

Vishwanath Singh P.W. 36 has denied lecturing or distributing slips. Though Vishwanath Singh's presence at Sagra (which is home village) may create suspicion, we do not find the evidence of the petitioner sufficient regarding the fact that he rendered assistance to respondent No. 1.

17. The allegation No. (5) is that Niranjansingh Patwari acting as Girdawar, supported respondent No. 1 and helped him in procuring votes at Bilao. Dhaniram P.W. 28 has vaguely said that Niranjansingh was trying for Ramrajya and he was with Prabal Pratap Singh when he threatened voters. Harbilas P.W. 20 has said that Niranjansingh belongs to respondent No. 1's community and he did propaganda for Ramrajya. Niranjansingh R.W. 1 has denied all these things. We do not find the petitioner's evidence satisfactory.

18. There is no evidence regarding the allegation No. (6) that Bhavani Shankar, Teacher of School Bilao, supported the cause of respondent No. 3.

19. Considering the evidence as a whole we are of opinion, that the corrupt practices mentioned in list B are not proved and hence we decide issue No. 4 in the negative.

20. *Issue No. 5.*—The allegation in para. No. 7 of the petition is that the Presiding Officer of Umari Polling Station, changed the time of commencement of polling from 8 A.M. to 9 A.M., so many voters did not turn up at all.

21. Raghunath Singh P.W. 18 has said that as the polling started at 9 A.M., 100-125 voters who had assembled at 8 A.M. went away. Bateshwar Dayal P.W. 19 has said that 60-70 men went away as polling started late. We find that the evidence produced is not consistent with the objection in the petition. We are not satisfied that the polling really started late, even if there be a little lack of punctuality, there appears to be no cause for the voters to go away. We decide issue No. 5 against the petitioner.

22. *Issue No. 6.*—The allegation is that at Sagra the polling was to take place in school building but the Presiding Officer changed the place and polling took place in the Chaupal of Himmat Bahadursingh. Prahladsingh P.W. 25, Sobaransingh P.W. 37 and Shrawansingh P.W. 20 have said that formerly the poll was to take place in school building but it took place in Himmat Bahadur's Chaupal. It is difficult to say the reason for this change. In file No. 6/51×14/3, which is regarding the final publication of polling stations there is a printed list in which the place of voting for Sagra is mentioned as Lalsingh-Ki-Baithak, there is another copy of the same list, in which, in place of Lalsingh-Ki-Baithak, word school has been written. This amended list is sent by the Collector to the Chief Electoral Officer, Madhya Bharat. To us it appears that this proposed change was not approved by the authorities concerned, so the Presiding Officer followed the printed list, and had the polling station in Lalsingh-Ki-Baithak which is also called Himmat Bahadur's Chaupal. There is no ground to believe that the Presiding Officer acted in collusion with the agent of respondent No. 1 or that some voters returned because of this change. We decide issue No. 6 in the negative.

23. *Issue No. 8.*—The objection of respondent No. 1 is that all duly nominated candidates have not been made respondents. Probably this objection relates to Dwarka Singh who has withdrawn. In Election Petition No. 221 of 1952 published in the Gazette of India dated 5th May 1953 page 1153 and Election Petition No. 176 of 1952, we have held that a candidate who had withdrawn is not a necessary party and as such his not being made a respondent is not fatal to the petition. We do not find any grounds to take a different view in this case, hence this issue stands decided against respondent No. 1.

24. *Issue No. 13.*—In view of our finding on issue No. 3 we don't think it necessary to consider this issue.

25. *Issue No. 14.*—Since the petitioner has failed on the main issues Nos. 1, 2, 3, 4, 5, 6 he is not entitled to any relief.

26. The result is that this petition is fit to be dismissed.

## ORDER

27. The election petition No. 285 of 1952 is dismissed. The petitioner shall bear his own costs and shall pay to the contesting respondent No. 1 Rs. 819/1/- by way of costs as detailed below:—

	Rs.	As.	Ps.
(1) Stamp for Vakalatnama.	0	10	0
(2) Pleader's Fee.	250	0	0
(3) Process Fees.	33	4	0
(4) Witnesses Charges.	481	11	0
(5) Miscellaneous applications.	1	8	0
(6) Inspection of records.	2	0	0
(7) Handwriting Expert's Fees.	50	0	0
(Though the handwriting expert is paid more we have thought it fit to reduce the fee).			
Total :—	819	1	0

(Sd.) V. K. DONGRE, *Chairman*,  
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member*.

(Sd.) BHAGWAN SWAROOP, *Member*.

Dated Gwalior, the 26th September, 1953.

## ANNEXURE 'A'

(Order dated the 16th December, 1952)

We have heard Mr. Shiv Dayal for the petitioner and Mr. Puttural for the respondent No. 1 on issue Nos. 9, 10, 11 and 12.

Mr. Puttural has contended before us that the petition is defective in so far as the place of verification is not mentioned and secondly at the foot of the petition he has not mentioned which paragraphs are verified on the petitioner's own knowledge and which upon belief, hence his petition must be rejected under section 85 of the R.P. Act, 1951. Mr. Puttural has cited A.I.R. 1949 Ajmer 37 in support of his arguments. Mr. Shiv Dayal in reply has said before us that although the verification in the present case is not in strict compliance with the Code it substantially complies with it and is not fatal to the petition. Mr. Shiv Dayal has cited in his support I.L.R. Allahabad Series Vol. 18 page 396.

We have considered very carefully the various authorities on defective verification. The trend of authorities is towards the view that a defect in verification is only an irregularity in procedure and will not be a ground for rejecting the plaint. Moreover section 85 of the R.P. Act 1951 gives power to the Election Commission to dismiss a petition if it is not properly presented within the proper time or it is not accompanied by a list of particulars and does not contain the facts as contemplated by section 83 of the Representation of the People Act. So far as we are concerned an important provision for enabling the Tribunal to dismiss the petition for non-compliance with any of the above provisions is also given by virtue of sub-section 4 of section 80 of the R.P. Act. Looking to the formal defects in verification as pointed before us in this petition we are of the view that the petitioner has substantially complied with the provisions of the Code as detailed in Order VI Rule 15 and as such the arguments put forth before us by the learned counsel for respondent have not much of force and even the ruling cited by him does not support him so far as the dismissal of the petition is concerned. It is our considered opinion that the petition under reference as verified does substantially comply with and satisfy the rule. So issue No. 9 stands decided against the respondent.

Issue No. 10.—This objection relates to para. Nos. 6, 7, 8 and 9 of the petition. The particulars of corrupt practice mentioned in para. No. 6 are given in list 'B'. This list gives the names of persons, place, time as required by section 83(2) of the R.P. Act. As far as the undue influence by Patels is concerned no particulars are given in list 'B'.

Regarding para. No. 7 the learned counsel for respondent No. 1 has frankly conceded that no particulars are needed to be given as the facts disclosed do not come under corrupt or illegal practices.



In para. No. 8 the petitioner has said 'At the polling station many ladies voted more than once and certain number of false votes were also taken as there was no arrangement for detection and identification of such voters'. In our view these assertions are quite vague. The names of ladies who voted more than once and details of false votes should have been given.

In para. No. 9 the petitioner has said that the return of election expenses is not made according to law and rules. The receipts filed are false and fabricated. These allegations are no doubt quite vague.

As there are no particulars regarding para. Nos. 8 and 9 and in para. No. 6 particulars of undue influence are not given and to ask for full material particulars at this stage will amount to filling up the gaps and introduce a new case of different kind, from that originally intended and in addition to this involves the possibility of being unfair to the respondent and of permitting the petitioner to turn his own default to his advantage, we order that the petitioner will not be entitled to lead evidence on these matters.

**Issue No. 11.**—The contention of the respondent No. 1 is that the petitioner has made two prayers which are not permissible. The prayer is in the following words: "The election of respondent No. 1 be declared to be void or that the election of the respondent No. 1 to be void and the petitioner to have been duly elected".

Section 84 of the R.P. Act is as follows:—A petitioner may claim any one of the following declarations:—

- (a) that the election of the returned candidate be void.
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.
- (c) that the election is wholly void.

The petitioner\* in this case has asked for relief (a) or (b) in the alternative and relief (b) includes relief (a). After going through sections 84 and 98 of the R.P. Act we do not think that the prayer made is not legal, hence we decide issue No. 11 against the respondent.

**Issue No. 12.**—The contention of the respondent is that the petitioner has not prayed that the election be wholly declared void hence the allegations contained in para. Nos. 3, 4, 5 and 6 of the petition cannot be enquired into. The allegations made in these 4 paragraphs are of the nature of grounds given in section 100 of the R.P. Act for declaring election to be void. Under section 81 of the Representation of the People Act a petition may contain one or more grounds specified in section 100(1), (2) and section 191. Though the petitioner has not asked for declaring the election wholly void under section 98 of the R.P. Act the Tribunal can declare the election wholly void. The powers of the Tribunal are not fettered by the prayer made by the petitioner. In our view the objection of the respondent regarding para. Nos. 3, 4, 5 and 6 has no force hence issue No. 12 is decided against the respondent.

Pronounced on 16th December 1952.

- (Sd.) V. K. DONGRE, *Chairman,*  
Election Tribunal, Gwalior.
- (Sd.) BHAGWAN SWAROOP, *Member,*  
Election Tribunal, Gwalior.
- (Sd.) SURAJ BHAN, *Member,*  
Election Tribunal, Gwalior.

[No. 19/265/52-Elec.III.]

By Order,  
P. R. KRISHNAMURTHY, Asstt. Secy.

